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SUPREME COURT OF THE UNITED STATES.

No. 255.

ELI McMILLAN AND AL., PL'FFS IN ER.,

vs.

SAMUEL BOYLES, COUNTY JUDGE, AND ROBERT McFARLAND, TREASURER OF LEE COUNTY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

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United States of America, ss.

The President of the United States to the honorable the judges of the supreme court of the State of Iowa, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit, between Eli McMillan, Eli Seely, Abraham Anderson, Alexander McGreer, William Campbell, E. S. McCullough, Benjamin C. Burt, John F. Waldron, Samuel Borland, Samuel Maloy, George W. Browning, and William Robinson, appellants, and Samuel Boyles, county judge, and Robert McFarland, treasurer of Lee county, State of Iowa, appellees, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the constitution, treaties, or laws of the United States, and the decision was in favor of such, their validity; or wherein was drawn in question the construction of a clause of the constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Eli McMillan, Eli Seely, Abraham Anderson, Alexander McGreer, William Campbell, E. S. McCullough, Benjamin C. Burt, John F. Waldron, Samuel Borland, Samuel Maloy, George W. Browning, and William Robinson, as by their complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court, the 19th of February, in the year of our [SEAL.] Lord one thousand eight hundred and fifty-nine.

Attest: J. C. BURNS,
Clerk Dist. Court of the U. S. for Dist. of Iowa.

Allowed by

GEO. G. WRIGHT,
Chf. Justice Sup. Court, Iowa.

In supreme court of the State of Iowa, in chancery, June term, 1858.

ELI MCMILLAN et al.
vs.
SAMUEL BOYLES, county judge, and ROB'T MCFARLAND, treasurer of Lee county.

To the honorable the court above named, or the honorable George G. Wright, president of said court:

The undersigned, on oath, as directed by law, respectfully states that the above suit, although commenced and carried on in the name of certain plaintiffs, is for the benefit and relief of a large number of the legal voters and tax payers of Lee county, who contribute to the expense of said suit; that said voters and tax payers, in public meeting for that purpose convened, appointed a committee of five persons, with full power to raise funds, employ counsel, and do all things necessary to carry said suit into the Supreme Court of the United States on writ of error; that petitioner is chairman of said committee; that it has been determined, and counsel employed thus to litigate said suit; that in his opinion and belief, and as he is advised, there are involved in said cause questions of constitutionality arising upon the State and Federal constitutions, proper to be investigated in the Supreme Court of the United States, under the laws of Congress; he therefore prays for the allowance of a writ of error, to remove said cause to said court, for final adjudication and decision. February 16th, 1859.

CHARLES H. LEGGATT.

Sworn to and subscribed before me the date above.

GEO. G. WRIGHT,
Chf. Justice Sup. Court, Iowa.

State of Iowa.

I, George G. Wright, chief justice of the supreme court of the State of Iowa, do certify that in the foregoing case there was drawn in question the validity of a statute of this State, on the ground of its being repugnant to the constitution of the United

States, and that the decision of our said court was in favor of the validity of such statute.

Witness my hand this 16th day of February, A. D. 1859.

GEO. G. WRIGHT,
Chf. Justice Sup. Court, Iowa.

The United States of America.

To Samuel Boyles, county judge, and Robert McFarland, treasurer of Lee county, Iowa, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Iowa, wherein Eli McMillan, Eli Seely, Abraham Anderson, Alexander McGreer, William Campbell, E. S. McCullough, Benjamin C. Burt, John F. Waldron, Samuel Borland, Samuel Maloy, George W. Browning, and William Robinson are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this 19th day [SEAL.] of February, in the year of our Lord one thousand eight hundred and fifty-nine.

Attest: J. C. BURNS,
Clerk U. S. Dist. Court for District of Iowa.

On this thirty-first day of October, in the year of our Lord one thousand eight hundred and fifty-nine, personally appeared before me, the subscriber, A. J. McCracken, and makes oath that he delivered a true copy of the within citation to Samuel Boyles, county judge of Lee county, Iowa, by leaving a true copy thereof with Charlotte Dean, who is over the age of fourteen years, at his usual place of residence, and who is also a member of his family; and on Robert McFarland, treasurer of Lee county, Iowa, by leaving a true copy of the same with Mrs. Eckhart, a person over the age of fourteen years, and a member of his family, and at his usual place of residence.

A. J. McRACKEN.

Subscribed and sworn to October 31st, A. D. 1859.

ERIE J. LEECH, *Clerk D. C.*
By D. H. LE SUER, *Deputy.*

State of Iowa, county of Lee, ss.

Before me, the subscriber, a notary public in and for said county, *person* personally came Andrew J. McCracken, who, on

oath, says he served the within citation on Samuel Boyles, county judge, and Robert McFarland, treasurer of the county aforesaid, on the 31st day of October, 1859—on said Boyles, by leaving a true copy thereof with Charlotte Dean, a member of his family, over fourteen years of age, and at his residence in the county seat of Lee county; and on said McFarland, by leaving a true copy thereof with Mrs. Eckhart, a member of his *his* family, over fourteen years of age, at his residence at the county seat aforesaid.

A. J. McRACKEN.

Subscribed and sworn to before me, this 1st November, 1859.

FRANCIS SEMPLE,
Notary Public.

State of Iowa, county of Lee, set.

I, Erie J. Leech, clerk of the district court in and for said county, hereby certify that Francis Semple, Esq., is an acting notary public in and for said county, duly commissioned, sworn, and qualified, and his signature to the certificate herewith annexed I know to be genuine.

[SEAL.] Witness my hand and official seal, at office at Keokuk, November 2d, 1859.

ERIE J. LEECH,
Clerk D. C.

Fee, 35 c.; paid by Semple.

State of Iowa, supreme court.

At a term of the supreme court of the State of Iowa, begun and held at the state-house in Iowa city, on the first Monday of December, A. D. 1856. Present: the Hon. George C. Wright, C. J.; Wm. G. Woodward, L. D. Stockton, justices.

Appeal from the Lee county district court.

ELI McMILLAN et. al.
against
SAMUEL BOYLES, Co. Judge, Lee co.

Be it remembered, that heretofore, to wit, on the 10th day of December, A. D. 1856, a transcript from the Lee county district court, was filed in the office of the clerk of the supreme court of Iowa, in the words and figures following, to wit:

"Be it remembered, that at a district court for the county of Lee, and State of Iowa, begun and held at the court-house in the city of Fort Madison, on Monday, the 27th day of October, 1856, Hon. H. B. Hendershott, judge of the third judicial district of Iowa, presiding.

Among other, the following proceedings were had, to wit:

Heretofore, to wit, on the 15th day of October, 1856, a petition was filed in said court, in words and figures following, to wit:

To the district court of Lee county, Iowa, at Fort Madison.

Your petitioners, Eli McMillan, Eli Seely, Abraham Anderson, Alexander McGreer, William Campbell, E. S. McCullough, Benjamin C. Burt, John F. Waldron, Samuel Borland, Samuel Maloy, George W. Browning, and William Bobinson, respectfully represents: that honorable Samuel Boyles, judge of Lee county aforesaid, by virtue of certain proceedings recorded in his office, a certified copy whereof is herewith exhibited, and marked exhibit A, and made a part hereof, is about very soon, in his capacity of county judge, and for the use and benefit of and in the name of said county, to take stock in three several railroad companies, to wit: The Fort Madison, West Point, Keosauqua and Bloomfield Railroad Company, the Keokuk, Fort Des Moines and Minnesota Railroad Company, and the Keokuk, Mount Pleasant and Muscatine Railroad Company, to the amount of one hundred and fifty thousand dollars in each of the said companies, making in the aggregate the sum of four hundred and fifty thousand dollars, for which he is to, and *and* it is believed will issue the bonds of said county, payable twenty years after date, and bearing eight per cent. interest from date, and payable in the city of New York, the interest semi-annually; that to provide for the payment of the interest and principal of said bonds, an annual tax not exceeding one per cent. on the county valuation, is proposed by the proceedings aforesaid to be levied upon the real and personal property of the county of Lee aforesaid, as long as the same may be necessary for that purpose; that said county judge or his successor in office shall in person or by proxy represent the stock taken by said county in said companies; that said proceedings purporting to authorize the taking of the stock and issuing of the bonds aforesaid, is entered upon the minute book in the county judge's office in said Lee county; that they are each residents of said Lee county, Iowa, and own real and personal property subject to taxation therein, in the aggregate to an amount not less than one hundred thousand dollars, which property, in connexion with that of their fellow-citizens of said county, must be affected, and they believe injuriously, by taking of said stock and issuing of said bonds to be provided for by taxation in the manner stated; that the number of persons interested in the questions presented, is so great as to render it impracticable to bring them all as plaintiffs before this court; that from their own knowledge and advice of counsel on whom they rely, they believe that the county judge of Lee county has not, nor cannot have conferred upon him as his county by legislative enactment under the constitution of the State of Iowa, the power to take stock in a corporation, as being attempted to be done in this case; and that if *much* power can be exercised under

said constitution, it can only be done in one case at the time, and not by uniting two or more projects together, as in the case here presented. That from their own knowledge and advice as aforesaid, it is their conviction and belief, that under the code of Iowa, no power is given to a county judge, as to a county, to pursue the course complained of in the present case, and that if such is the law, the same has not been complied with, as will appear by inspection of the records in the case: that as they are advised and verily believe, the entire proceedings, as set forth and exhibited in the file of papers marked A, are without authority of foundation, unconstitutional as statute law, and therefore void from the beginning and in toto, and that if suffered to be carried out to completion, as seems to be intended, they severally, as well as a great number of their fellow-citizens, will be seriously injured and damaged thereby; that the certified copy of the proceedings exhibited are not full and complete, but as far as could be obtained at the time, the entire record not being made up, nor ready to be made up, the proceedings not being complete until full publication of notice, which will be about the 24th of October, 1856, three days only before the setting of this court.

They therefore pray that the entire proceedings before the county judge aforesaid, when made up and complete, may be considered a part of this petition and be inspected and acted upon accordingly, or petitioners be permitted to attach hereto a certified copy of the remainder thereof, when the same shall be completed.

They further pray that said Samuel Boyles, in his capacity of county judge as aforesaid, and said Lee county, Iowa, represented by him, be made a party or parties to this bill. And that upon hearing hereof, the said proceedings above complained of be declared by proper decree of this court illegal and void; and as an independent means of relief, an injunction be allowed them to restrain, enjoin, and prevent the said county judge, and all persons hereafter acting in that capacity in said county, and the said county itself, from proceeding any further in the said premises, and particularly and especially from issuing the bonds aforesaid, or subscribing the stock aforesaid.

They also ask for such other and farther relief as they may be entitled to in a court of equity.

FRANCIS SEMPLE,
Attorney for Plaintiff.

In the matter of the county subscription.

To the Keokuk, Ft. Des Moines, and Minnesota Railroad Company, to the Keokuk, Mt. Pleasant, and Muscatine Railroad Company, and to the Ft. Madison, West Point, Keosauque, and Bloomfield Railroad Company.

COUNTY JUDGE'S OFFICE,
Lee county Iowa, August 3d, A. D. 1856.

Application having been made by petition to the county judge

of said county, signed more than one-fourth of the voters of Lee county, asking to have a vote taken at the earliest practicable day upon the following propositions, to be voted for separately at the same time and places, to wit:

Shall the county of Lee subscribe one hundred and fifty thousand dollars to the capital stock of the Keokuk, Ft. Des Moines, and Minnesota Railroad Company. Shall the county of Lee subscribe one hundred and fifty thousand dollars to the capital stock of the Keokuk, Mt. Pleasant, and Muscatine Railroad Company. Shall the county of Lee subscribe one hundred and fifty thousand dollars to the capital stock of the Ft. Madison, West Point, Keosauqua, and Bloomfield Railroad Company; the said stock to be paid in twenty years eight per cent. county bonds, the principal and interest payable in the city of New York, the interest semi-annually; and that an annual tax may be levied sufficient with the dividends arising from the stock so subscribed to pay said interest, and ask that your honor's proclamation submitting said vote may contain a condition that the said subscription shall not be made to either of said companies, unless the vote shall be carried in favor of each and all of them, and also that the Keokuk, Ft. Des Moines, and Minnesota Railroad Company, and the Ft. Madison, West Point, Keosauque, and Bloomfield Railroad Company, and all persons claiming county bonds on the old county subscription under them, as either of them shall, upon receiving the bonds under the vote proposed to be taken, release to the county all claims to the said subscription heretofore voted them.

COUNTY JUDGE'S OFFICE,
Lee county, Iowa, September 18, *A. D.* 1856.

On this day the following copy of the election notice and affidavits therewith were this day filed in the office of the county judge of Lee county, to wit:

Election notice.

To the people of Lee county, Iowa.

Whereas petitions signed in behalf of a large portion of the citizens of said Lee county, Iowa, have been presented to the undersigned, county judge of said county, asking that the question be submitted to a vote of the county, whether the county will aid in the construction of the Keokuk, Ft. Des Moines, and Minnesota Railroad, the Ft. Madison, West Point, Keosauque, and Bloomfield Railroad, and the Keokuk, Mt. Pleasant, and Muscatine railroad, by subscribing the sum of one hundred and fifty thousand dollars to the capital stock of each of said railroad companies:

Now, therefore, in order that the sense of the voters of said county may be taken in the premises, it is hereby ordered that a special election be held in each township in said county, at the

usual places of holding elections in said county, on Wednesday, the 10th day of September, A. D. 1856, for the purpose of voting "for or against the following propositions, to wit:

"Shall the county of Lee subscribe one hundred and fifty thousand dollars to the capital stock of the Keokuk, Ft. Des Moines, and Minnesota Railroad Company." "Shall the county of Lee subscribe one hundred and fifty thousand dollars to the capital stock of the Ft. Madison, West Point, Keosauque, and Bloomfield Railroad Company." "Shall the county of Lee subscribe one hundred and fifty thousand dollars to the capital stock of the Keokuk, Mt. Pleasant, and Muscatine Railroad Company," the said stock to be paid in twenty years' eight per cent. county bonds, principal and interest payable in the city of New York, the interest semi-annually; that in addition to the usual taxes, *and* annual tax not exceeding one per cent. on the county valuation, and continued from year to year, so long as the same is required, be levied, to be applied to the liquidation of the interest and principal of the bonds aforesaid, unless it is found that said interest and principal can be satisfied by the dividends arising from, or the sale of the stock above mentioned. The first years' interest is to be paid by the railroad companies, which is to be paid back to the companies out of the first dividends upon said stock arising from the use of said road; that said companies, upon issuing to them respectively county bonds, shall each be required to give bond in the penal sum of two hundred thousand dollars, or other security to the satisfaction of the county judge, conditioned that the money arising from the sale of said county bonds or materials purchased with said bonds, be faithfully applied to the construction of said railroads, in Lee county, Iowa, and *that* the highest market price that can be obtained for the same. The county judge of Lee county aforesaid shall in person or by proxy represent the stock taken by said county in the companies aforesaid; that the forms of the ballots shall be "for the county subscription to the Keokuk, Ft. Des Moines, and Minnesota Railroad Company," or, "against the county subscription to the Keokuk, Ft. Des Moines, and Minnesota Railroad Company." "For the county subscription to the Ft. Madison, West Point, Keosauqua, and Bloomfield Railroad Company," or, "against the county subscription to the Ft. Madison, West Point, Keosauqua, and Bloomfield Railroad Company." "For the county subscription to the Keokuk, Mt. Pleasant, and Muscatine Railroad Company," or, "against the county subscription to the Keokuk, Mt. Pleasant, and Muscatine Railroad Company."

A majority of votes for the county subscription to the Keokuk, Ft. Des Moines, and Minnesota Railroad Company will be considered as adopting the above proposition to take stock in said railroad. A majority of votes for the county subscription to the Ft. Madison, West Point, Keosauque, and Bloomfield Railroad

Company will be considered as adopting the above proposition to take stock in said railroad. A majority of votes for the county subscription to the Keokuk, Mt. Pleasant, and Muscatine Railroad Company will be considered as adopting the above proposition to take stock in said railroad.

That the said subscription shall not be made to either of said companies unless the vote shall be carried in favor of each and all of them, and also, that the Keokuk, Ft. Des Moines, and Minnesota Railroad Company, and the Ft. Madison, West Point, and Keosauque and Bloomfield Railroad Company, and all persons claiming the county bonds on the old county subscription, heretofore voted them.

It is farther directed that the law governing elections shall, as far as compatible, be applied to the election herein ordered.

SAMUEL BOYLES,
Judge of Lee county, Iowa.

County judge's office, August 3d, 1856.

State of Iowa, Lee county, set.

COUNTY JUDGE'S OFFICE,
Fort Madison, Iowa, September 18, 1856.

Whereas the county judge in and for said county did, on the 3d of August last, put, issue, and publish the following notice, to wit:

Election notice.

"To the" people of Lee county, Iowa.

"Whereas petitions, signed in behalf a large portion of the citizens of said Lee county, Iowa, have been presented to the undersigned, county judge of said county, asking that the question be submitted to a vote of the county, whether the county will aid in the construction of the Keokuk, Ft. Des Moines and Minnesota Railroad," the Ft. Madison, West Point, Keosauqua and Bloomfield Railroad," and the Keokuk, Mt. Pleasant and Muscatine Railroad, by subscribing the sums of one hundred and fifty thousand dollars to the capital stock of each of said railroad companies:

"Now, therefore, in order that the sense of the voters of said county may be taken in the premises, it is hereby ordered that a special election be held in each township in said county, at the usual places of holding in said county, on Wednesday, the 10th day of September, A. D. 1856, for the purpose of voting "for" or "against" the following proposition, to wit: "Shall the county of Lee subscribe one hundred and fifty thousand dollars to the capital stock of the Keokuk, Ft. Des Moines and Minnesota Railroad Company;" shall the county of Lee subscribe one hundred and fifty thousand dollars to the capital stock of the Fort Madison, West Point, Keosauqua and Bloomfield Railroad Company;" shall the county of Lee subscribe one hundred and fifty thousand

dollars to the capital stock of the Keokuk, Mt. Pleasant and Muscatine Railroad Company." "The said stock to be paid in twenty years, eight per cent. county bonds, principal and interest payable in the city of New York, the interest semi-annually;" "that in addition to the usual taxes, an annual tax not exceeding one per cent. on the county valuation, and continued from year to year, so long as the same is required, be levied, to be applied to the liquidation of the interest and principal of the bonds aforesaid, unless it is found that said interest and principal can be satisfied by the dividends arising from or the sale of the stock above mentioned. The first years' interest is to be paid by the railroad companies, which is to be paid back to the companies out of the first dividends upon said stock arising from the use of said roads; that said companies, upon issuing to them respectively county bonds, shall each be required to give bond in the penal sum of two hundred thousand dollars, or other security to the satisfaction of the county judge, conditioned that the money arising from the sale of said county bonds, or materials purchased with said bonds, be faithfully applied to the construction of said railroads in Lee county, Iowa, and *that* the highest market price that can be obtained for the same; that the county judge of Lee county aforesaid shall in person or by proxy represent the stock taken by said county in the companies aforesaid; "that the forms of the ballot shall be "for the county subscription to the Keokuk, Ft. Des Moines, and Minnesota Railroad Company." or "against the county subscription to the Keokuk, Ft. Des Moines, and Minnesota Railroad Company." "For the county subscription to the Ft. Madison, West Point, Keosauqua, and Bloomfield Railroad Company," or "against the county subscription to the Ft. Madison, West Point, Keosauqua, and Bloomfield Railroad Company." "For the county subscription to the Keokuk, Mt. Pleasant, and Muscatine Railroad Company," or "against the county subscription to the Keokuk, Mt. Pleasant, and Muscatine Railroad Company." "A majority of the votes for the county subscription to the Keokuk, Ft. Des Moines, and Minnesota Railroad Company will be considered as adopting the above proposition to take stock in said railroad." "A majority of the votes for the county subscription to the Ft. Madison, West Point, Keosauqua, and Bloomfield Railroad Company will be considered as adopting the above proposition to take stock in said railroad. "A majority of votes for the county subscription to the Keokuk, Mt. Pleasant, and Muscatine Railroad Company will be considered as adopting the proposition to take stock in said railroad."

"That the said subscription shall not be made to either of said companies unless the vote shall be carried in favor of each and all of them, and also that the Keokuk, Ft. Des Moines, and Minnesota Railroad Company, and the Ft. Madison, West Point, Keosauqua, and Bloomfield Railroad Company, and all persons

claiming the county bonds on the old county subscription, heretofore voted them.

It is further directed that the law governing elections shall, as far as compatible, be applied to the election herein ordered.

SAMUEL BOYLES,
Judge of Lee county, Iowa.

County judge's office, August 3d, 1856.

And whereas the said county judge being satisfied that all the requirements of the statute in regard to such elections have been substantially complied with in the premises, and that the majority of the votes cast at the election on the 10th day of September, 1856, mentioned in said "notice," were for the county subscription "to each and all of said railroads:

Therefore, notice is hereby given that all the propositions in said election notice" are adopted. SAMUEL BOYLES,
Judge of Lee county, Iowa.

Ft. Madison, September 26th, 1856.

State of Iowa, Lee county, ss.

D. W. Henry, upon his oath, swears that he posted printed copies of the annexed election notices, at least four in each of the following named townships, to wit: Green Bay, Denmark, Pleasant Ridge, Marion, Cedar, Harrison, Franklin, West Point, Washington, Madison, Jefferson, Charleston, Van Buren, Des Moines, Montrose, and Jackson, at least four weeks before the tenth day of September, A. D. 1856. D. W. HENRY.

Subscribed and sworn to before me this 18th day of September, 1856.

[SEAL.] In testimony whereof, I have hereto set my hand and affixed the county seal of said county, the date aforesaid.

SAMUEL BOYLES,
Judge of Lee county, Iowa.

State of Iowa, Lee county, ss.

Samuel Boyles, upon oath, states that he posted a printed copy of the foregoing election notice up at the door of the court-house, in Ft. Madison, in said county, at least thirty days before the 10th day of September, 1856.

Sworn to and subscribed before me this 3d day of October, 1856. SAMUEL BOYLES.

ERIE J. LEECH, *D. C.*
By JOHN A. NUNN, *Deputy.*

State of Iowa, Lee county, ss

Benjamin Grossman, being duly sworn, says that he is one of the publishers of the "Ft. Madison Plain Dealer," a weekly newspaper published in Ft. Madison, in said county, and that the annexed election notice, signed by Samuel Boyles, judge of Lee county,

Iowa, was published for more than four consecutive weeks in said newspaper, prior to the 10th day of September, A. D. 1856, the first issue being on the 8th day of August, 1856, and continued in said paper until the 10th day of September, A. D. 1856.

BENJAMIN GROSSMAN.

Sworn and subscribed before me, this 18th day of September, 1856.

In testimony whereof, I have hereto subscribed my name and affixed the seal of said county of Lee, at Ft. Madison, the date aforesaid. [SEAL]

SAMUEL BOYLES,
Judge of Lee county, Iowa.

Abstract of an election, for the county subscription and against the county subscription, "held in the several townships of Lee county, State of Iowa, on Wednesday, the 10th day of September, A. D. 1856, in pursuance of the notice issued by the county judge, herewith annexed, and made a part of this abstract.

	Green Bay.	Denmark.	Pleasant Ridge.	Marion.	Cedar.	Harrison.	Franklin.	Washington.	Madison.	Jefferson.	Charleston.	Van Buren.	Des Moines.	Montrose.	Jackson.	West Point.	Total.
For county subscription to the Keokuk, Ft. Des Moines and Minnesota R. R. Company.	14	7	12	21	1	2	29	30	382	2	22	3	24	54	1,809	125	2,537
For the county subscription to the Ft. Madison, West Point, Keosauqua and Bloomfield R. R. Co.	14	7	13	21	26	2	29	30	382	2	21	2	24	54	1,807	125	2,559
For the county subscription to the Keokuk, Mt. Pleasant and Muscatine R. R. Co.	13	7	13	21	2	2	29	30	382	3	22	2	24	54	1,808	125	2,537
Against the county subscription to the Keokuk, Ft. Des Moines and Minnesota R. R. Co.	27	87	49	41	81	127	104	46	16	54	98	43	53	39	12	59	937
Against the county subscription to the Ft. Madison, West Point, Keosauqua and Bloomfield R. R. Co.	26	87	49	41	53	127	104	45	16	54	99	43	53	39	12	59	907
Against the county subscription to the Keokuk, Mt. Pleasant and Muscatine R. R. Co.	28	87	48	41	80	127	104	45	16	54	99	43	53	39	12	59	935

There were three thousand four hundred and seventy-four (3,474) ballots cast for the county subscription and against the county subscription to the Keokuk, Ft. Des Moines, and Minnesota Railroad Company, of which there were two thousand five hundred and seventy-seven (2,537) and nine hundred and thirty-seven (937) against the county subscription to said road.

There were three thousand four hundred and sixty-six (3,466) ballots cast for the county subscription and against the county subscription to the Ft. Madison, West Point, Keosauqua, and Bloomfield Railroad Company, of which there were two thousand five hundred and fifty-nine (2,559) for the county subscription, and nine hundred and seven (907) against the county subscription to said road.

There were three thousand four hundred and seventy-two (3,472) ballots cast for the county subscription, and against the county subscription to the Keokuk, Mt. Pleasant, and Muscatine Railroad Company, of which there were two thousand five hundred and thirty-seven (2,537) for the county subsciption, and nine hundred and thirty-five (935) against the county subscription to said road.

In testimony whereof, we, Samuel Boyles, county judge of said county of Lee, and Henry M. Salmon and J. H. West, justices of the peace in said county, have hereunto subscribed our names as county canvassers; and the said Samuel Boyles, county judge as aforesaid, has hereunto affixed the seal of said county, this 17th day of September, A. D. 1856.

SAMUEL BOYLES, *County Judge,* } *County*
J. H. WEST, *J. P.,* } *Canvassers.*
H. M. SALMON, *J. P.,* }

State of Iowa, Lee county, set.

I, the undersigned, county judge of said county, do hereby certify that the foregoing, including the printed matter, is a true and correct transcript of the county records, so far as the same has been made of the county subscription to the railroads above mentioned.

In witness whereof, I have hereunto set my hand and affixed the seal of said county, at Ft. Madison, October 11th, 1856.

[SEAL.]

SAMUEL BOYLES,
County Judge.

Exhibit A, filed October 15, 1856.

ERIE J. LEECH,
Clerk D. C.

To Hon. Samuel Boyles, judge of Lee county, Iowa:

You are hereby notified that there is now on file in the office of the clerk of the district court of Lee county, at Ft. Madison, a

petition of Eli McMillan, Eli Seely, Absalom Anderson, Alexander McGreer, William Campbell, E. S. McCullough, Benjamin C. Burt, John F. Walden, Samuel Borland, Samuel Moloy, George W. Browning, and William F. Robinson, charging that the proceedings under proclamation or election notice issued by you under date of August 14th, 1856, voting bonds of the county to three several railroad companies therein mentioned, are irregular, unconstitutional, and illegal and void, for reasons set forth, that they will be injured thereby, and praying an injunction against said Lee county and you, as her representative, as an independent means of relief, to restrain and enjoin you from issuing bonds to said companies in pursuance thereof; and unless you appear and answer thereto on or before the second day of the next term of said court, said petition will be taken as true, and decree rendered against you thereon.

15th October, 1856.

FRANCIS SEMPLE,
Attorney for Petitioners.

To Hon. Samuel Boyles, judge of Lee county, Iowa:

SIR: You are hereby notified, that on or before the 15th day of October next, 1856, there will be on file in the office of the clerk of the district court of Lee county, at Ft. Madison, a petition of Eli McMillan, Eli Seely, Absalom Anderson, Alexander McGreer, William Campbell, E. S. McCullough, Benjamin S. Burt, John F. Walden, Samuel Boreland, Samuel Moloy, George W. Browning, and William H. Eaton, charging that the proceedings under an "election notice" issued by you, bearing date 14th August, 1856, voting bonds of the county to three several railroad companies therein mentioned, are irregular, unconstitutional, illegal, and void, and that they will be injured thereby, and praying an injunction against said Lee county and you, as her legal representative, as an independent means of relief, to restrain and prevent you from issuing bonds to said companies in pursuance thereof; and that unless you appear and answer thereto on or before the second day of the next term of said court, said petition will be taken as true, and a decree pro confesso rendered against you thereon.

15th September, 1856.

FRANCIS SEMPLE,
Attorney for Petitioners.

This notice came into my hands September 15, 1856. Served same day, by reading to Samuel Boyles, county judge of Lee county, Iowa, *no* copy of petition demanded.

C. B. TURNER,
Sheriff Lee County.
By W. H. LEECH, *Deputy.*

Sheriff fees, 60 cts.

Filed September 15, 1856.

ERIE J. LEECH, *Clerk D. C.*
By JOHN A. NUNN, *Deputy.*

Wednesday, October 29th, A. D. 1856.

ELI MCMILLAN
vs.
LEE COUNTY.

In this case, it is agreed and intended to present this case upon above demurrer and joinder therein, so as fully and fairly to raise and have determined the question raised by the bill, to wit, the constitutional and legal power of the county of Lee to vote for such railroad subscriptions, so as to render them valid and binding upon the county, and to issue bonds in payment thereof, as set forth in said petition, disregarding technicalities for the purpose of resisting the questions and having them decided; and further, that the record exhibited in the bill shall be considered as full and complete, or either party may produce upon the hearing in the supreme court such additional certified copies as they may deem proper, which shall become a part of said petition; also, that decree of dismissal pro forma in the district court, shall not prejudice said case in appeal.

F. SEMPLE, *Attorney for Plaintiffs.*
GEO. C. DIXON, *do.* " *Defendants.*

ELI MCMILLAN
vs.
LEE COUNTY.

And now comes on this case for hearing, and the parties, by their respective counsel, having appeared, it is agreed that a decree pro forma be entered in favor of said defendants; wherefore it is ordered, adjudged, and decreed that said demurrer be sustained, and said plaintiffs' petition be dismissed, and that said defendants recover their costs against said plaintiff; all which is done.

In this case, it is agreed and intended to present this case upon above demurrer and joinder therein, so as fully and fairly to raise and have determined the questions raised by the bill, to wit, the constitutional and legal power of the county of Lee to vote for such railroad subscription, so as to render them valid and binding upon the county, and to issue bonds as payments thereof, as set forth in said petition, disregarding technicalities for the purpose of resisting the questions and having them decided; and further, that the record exhibited in the bill shall be considered as full and complete, or either party may produce upon the hearing in the supreme court such additional certified copies as they may deem proper, which shall become a part of said petition;

also, that decree of dismissal pro forma in the district court shall not prejudice said case in appeal.

F. SEMPLE, *Attorney for Plaintiffs.*
GEO. C. DIXON, " " *Defendants.*

And now comes on this case for hearing, and the parties, by their respective counsel, having appeared, it is agreed that a decree pro forma be entered in favor of said defendants; wherefore it is ordered, adjudged, and decreed that said demurrer be sustained, and said plaintiffs' petition be dismissed, and that said defendants recover their costs against said plaintiffs; all which is done.

Notice of appeal on defendant is hereby waived for the next December term of Supreme Court.

GEO. C. DIXON,
Att'y for Defendant.

Filed October 29, 1856.

ERIE J. LEECH,
Clerk D. C.

ELI MCMILLAN and others
vs.
COUNTY OF LEE AND COUNTY JUDGE. } Bill in chancery.

And now in this case come said defendants, by Geo. C. Dixon, their attorney, and demur to said plaintiffs' petition, and say that the matters and things therein contained as the same are therein set forth, are not sufficient in law to entitle said plaintiffs to any relief or injunction against said defendants. And for cause of demurrer, said defendants aver that said proceedings in regard to said right, were all regular and in accordance with the constitution and the laws of this State, and were valid and effectual, and confirmed complete legal powers and authority upon said county judge, one of said defendants, to subscribe for said State, and to issue said bonds of said county for the amounts, to be distributed in proportions, and payable in the manner as is stated in said petition and proceedings thereto attached; wherefore said defendants pray judgment, and that said bill be dismissed with their costs.

GEO. C. DIXON,
Atty. for Defendant.

And now come said plaintiffs, and join in demurrer, and pray the relief and injunction assigned for in their petition.

F. SEMPLE,
Atty. for Plaintiffs.

Filed October 29, 1856.

E. J. LEECH,
Clk. D. C.

State of Iowa, Lee county, ss.

I, Erie J. Leech, clerk of the district court in and for said county, do hereby certify that the within and foregoing is a true and correct copy of all the papers and record entries in said cause, as the same appears of record in my office.

In testimony whereof, I hereunto set my hand and affix the seal of said court, at Ft. Madison, the December, 2d day, A. D. 1856. [SEAL.]

ERIE J. LEECH, *Clerk D. C.*
By J. A. NUNN, *Deputy.*

Fees - - - - -	$7 00
Postage - - - - -	30
Certificate - - - -	35
	7 65

And afterwards, to wit, on the 15th day of January, 1857, the following order was made, to wit:

ELI MCMILLAN et al.
vs.
THE COUNTY JUDGE OF LEE CO. } Appeal from Lee Co.

This cause having been submitted to the consideration of the court, and the court being now sufficiently advised in the premises, find that there is error in the rendition of the judgment of the district court, and the court having filed their written opinion, (see exhibit "A," page ,) it is therefore considered by the court that the judgment of the district court be reversed and set aside, and that further proceedings be had in the district court not inconsistent with the opinion of this court, and that a writ of procedendo issue accordingly, and that the appellant have and recover of the appellee his costs in this behalf laid out and expended, at this court taxed at $, and that execution issue therefor.

Copy.

The State of Iowa, ss.

The State of Iowa to the district court for the county of Lee.

Whereas the supreme court of said State being lately certified of the record and proceedings in a certain cause which was in the district court for the county of Lee and State aforesaid, wherein Eli McMillan, plaintiff, and the county judge of Lee, defendant, in which said cause judgment was rendered against the said plaintiff, for which judgment so rendered the said plaintiff appealed to the said supreme court, and the said court having duly examined the record and proceedings aforesaid in the premises,

at the capitol in Des Moines, in said State, on the 15th day of January, 1857, did reverse the judgment aforesaid as rendered in the court below, and order that further proceedings be had in the district court not inconsistent with the opinion of this court; therefore, you are hereby commanded that with the speed which of right, and according to law you may, you proceed in the same manner as if no judgment had been rendered in your court, or appeal had been taken and prosecuted in this court, anything in the record or proceedings aforesaid heretofore certified to the contrary notwithstanding.

Witness Lewis Kensey, clerk of the supreme court, with the seal of said court hereunto affixed, at Des Moines, this day of Jan'ry, A. D. 1857.

L. KENSEY,
Clerk of the Supreme Court.

And afterwards, to wit, on the 18th day of June, 1858, the following transcript was filed in the office of the clerk of the supreme court of Iowa, in the words and figures following, to wit:

State of Iowa, Lee county.

Pleas before the district court of Lee county, at a special called term, begun and holden in the county of Lee, on the second Wednesday of May, 1858, before the Hon. Thomas W. Claggett, judge of the first judicial dist. of Iowa.

ELI MCMILLAN et al.
against
SAMUEL BOYLES, Co. judge, and ROBERT MCFARLAND, Co. treas. } In chancery.

Be it remembered, that heretofore, to wit, on the 26th day of February, A. D. 1858, a petition was filed in the office of the clerk of the district court in and for the county of Lee, in the words and figures following, to wit:

To the district court of Lee county, Iowa, at Fort Madison:

Your petitioners, Eli McMillan, Samuel Borland, George W. Browning, Alexander Linn, E. S. McCullough, Alexander McGreer, William Campbell, Eli Seely, William J. Robinson, Eli Heaton, Samuel Maloy, and Absalom Anderson, respectfully represent: that on the 15th of September, 1856, they or ten of them and two others, who are not now interested and acting with them, filed in the office of the clerk of the district court against the said county of Lee and Hon. Samuel Boyles, judge of said county, a petition setting forth and exhibiting certain proceedings of said county, by which she was about to take stock in the several railroad companies therein named, charging that said proceedings were unconstitutional, illegal, and void, and praying an

injunction to prevent further proceedings thereon; that at the October term of this court, 1856, defendants appeared by attorney, demurred to said bill of petitioners, and by mutual agreement of counsel on both sides, said demurrer was sustained, and the bill dismissed at plaintiffs' costs: without prejudice, however, to either party in the contemplated hearing of said cause in the supreme court of this State, said suit was accordingly dismissed.

The petition, demurrer, agreements and entire proceedings in this court are hereby referred to and prayed to be inspected and made, and considered as part of this petition; that said cause thus decided and disposed of, was appealed by plaintiffs to the supreme court of the State, and fully heard and decided at the December term of said court, 1856; that said court, by Stockton, judge, delivered the opinion of the court, herewith exhibited, correctly stating the facts and delivering judgment in favor of petitioners, and granting the relief prayed for. Said exhibit is marked A, and prayed to be inspected and made a part of this petition; that at the time of making said decision by said court, the general assembly of the State of Iowa was in session at the capitol, and at the instance and request of the parties interested, passed a law attempting to cure the defects in the proceedings complained of, and if valid and effectual, overcoming and destroying the effect and force of said decision of said supreme court. Said law was approved, or become a law without approval, on the 29th day of January, A. D. 1857, and is found in session laws of that year, page 47, is hereby referred to and asked to be considered and taken as a part of this petition; that in said petition, the entire facts necessary to a proper understanding of the case are fully and it is believed correctly stated, and are rehearsed with great accuracy in the opinion of the supreme court alluded to, and present petitioners ask that the facts stated in said opinion be taken and considered as a part of this petition, to be corrected if error should be found therein, by comparison with their former petition on file in this court, all of which facts are again averred and charged to be true, unconstitutional, illegal, and void, as in said opinion and said former petition is stated and decided; that in defiance of the decision of said supreme court, and under a supposed protection of the said act of the general assembly, the county judge, and by and through him, have gone forward and taken the stock in the several railroad companies named, issued bonds to the said companies respectfully, to the amount of one hundred and fifty thousand dollars each, which bonds are either in the hands of said companies, or hypothecated by them for funds in the eastern cities, or elsewhere: that said county judge has levied a tax upon the taxable property of Lee county, of three mills to or on the dollar, making the sums as stated by himself of thirty-six thousand dollars, after allowing for delinquencies and contingencies in collecting, has issued his warrant to the treasurer of said county

for its collection, and said treasurer and collector is now collecting the same; that said petitioners own taxable property in said Lee county, directly affected by said proceedings to an amount not less than one hundred thousand dollars, of which they will soon be compelled to pay, unless said proceedings and collection of said tax be enjoined and restrained by preliminary injunction from this honorable court; that they charge and believe that the said above recited act of the general assembly is in violation of the constitution and utterly void; they further state that the persons acting with them, and whose interests are indentical with theirs, are so numerous that they cannot conveniently be brought before this court; they further state, that on the 13th of May, 1857, a notice, commencing suit to test the validity of said curative act, was put into hands of the sheriff of Lee county in good faith and with intent that it should be served, and that on the 15th July following, a petition was filed, as notified in said notice, and petitioner hoped and believed that said suit would be mutually brought to issue, and prepared *to* the supreme court, at the October term of this court, but were disappointed by sheriff's returning not found, as to one of the party defendants; that said suit existed on one of the files of this court from the date aforesaid, until about the 26th November, 1857, when finding no progress could be made in it, and that it would be necessary to enjoin or pay the tax aforesaid, the same was withdrawn, and costs paid. The papers therein are hereby referred to, and asked to be considered and taken as a part of this petition.

The petitioners pray that the said county judge, honorable Samuel Boyles, and the said county treasurer and collector, Robert McFarland, Esq., be made defendants to this petition; that they and each of them, and all persons acting by, through, or under them, or either of them be, by preliminary injunction from this court, enjoined and restrained from proceeding farther in the collection of said railroad tax; that said act of the general assembly and all proceedings had in Lee county in pursuance thereof be, upon final hearing hereof, be declared null and void, to all intents and purposes, and said preliminary injunction be made perpetual and binding upon the parties forever; and for such other and further relief as the nature of the circumstances of their case demand and it is within the province of a court of equity to *be* give.

FRANCIS SEMPLE,
Attorney for Plaintiffs.

State of Iowa, Van Buren county, set.

Francis Semple, being sworn, on oath says, the several facts stated in the within petition are mostly within his own personal knowledge, and so far as personally known are true, and the remainder believed to be true.

FRANCIS SEMPLE.

Sworn to and subscribed before me, this day of Dec., 1857.

Exhibit A.

State of Iowa, sup. court, December term, 1856.

ELI MCMILLAN et als., ptff. and appts., against LEE COUNTY & SAMUEL BOYLES, Co. judge of county, dfts. } In chancery.—Appeal.

The petitioners, twelve in number, residents of Lee county, and tax payers therein, applied by petition to the district court of Lee county, sitting at Fort Madison, to have certain proceedings of the county judge of said county declared illegal and void, and for an injunction to restrain him from taking stock in the name of the county in certain roads mentioned in the petition, and from issuing the bonds of said Co. in payment thereof.

The petition represents, that the county judge is about to subscribe for stock for the use and benefit and in the name of the county of Lee in the several railroad companies: that is to say, in the Fort Madison, West Point, Keosauqua, and Bloomfield Railroad Company, in the Keokuk, Fort Des Moines, and Minnesota Railroad Company, and in the Keokuk and Mt. Pleasant, and Muscatine Railroad Company, in each the amount of one hundred and fifty thousand dollars, for which he is to issue the bonds of the county of Lee, payable in twenty years with interest, payable semi-annually in the city of New York, at the rate of eight per cent. per annum; that to provide for the payment of the principal and interest of said it is proposed to levy an annual tax of one per cent. on the real and personal property of the citizens of said county, subject to taxation, so long as the same may be necessary for the object intended.

It is further represented, that the county judge claims to exercise the right and authority in the premises, by virtue of certain proceedings which are fully set out as part of the petition. From them we learn that a special election directed to be held at the usual places of holding elections in Lee county. On the 10th September, 1856, the electors of said county were required to determine by their votes, whether the county of Lee should subscribe for stock to the amount of one hundred and fifty thousand dollars in each of the said railroad companies, the said stock to be paid in the bonds of the county, bearing interest at the rate of eight per centum per annum; and whether, in addition to the usual taxes, an annual tax of not exceeding one per centum on the taxable property of the county, to be continued from year to year, so long as the same is required, should be levied, to be applied to the liquidation of the principal and interest of the bonds aforesaid.

It further appears from said proceedings, and from the notice given by the county judge of said special election, that the electors

were required to vote on each proposition for the subscription of the stock of each of said railroad companies separately; that it was stipulated in the proposition submitted and notice given to the electors, that a majority of the votes given for each proposition for subscription of stock should be considered as an adoption of the same, but that the subscription to either of said companies, unless there should be a majority of the votes cast in favor of each and all of them. On the 26th of September, 1856, the county judge being satisfied that all the requirements of the statute in regard to said election had been substantially complied with, and that a majority of the votes cast at said special election were cast in favor of said subscription by the county to the stock of each and all of said railroad companies, caused the proposition aforesaid and the results of said election to be entered at large in the minute book of the county court, as required by law, in order to give to said vote and the entry thereof on the county record the force and effect of an act of the general assembly of the State of Iowa.

The petitioners allege that their property will be injuriously affected by the subscription to the stock of said railroad companies, the issuing of said bonds by the county of Lee, and the levying of the tax in the manner set forth; that the number of persons interested in the question is *to* great as to render it impracticable to bring all as plaintiffs before the court. They charge that the county judge has no power under the constitution and laws of the State to take stock for the county of Lee in said companies, as he is intending to do, and that if he has authority to take and subscribe for stock at all, it can only be conferred by a vote of the people of the county, taken in accordance with law, in which each proposition for subscription of stock by the county, shall be voted for as a distinct and separate proposition, depending on its own merits, and not by a proceeding which unites two or more propositions, and makes the success and adoption of each one depend upon the adoption of all.

They further charge that the whole of the proceedings of the county judge in the premises are void, and without authority of law; they pray that the same may be so declared.

At the October term of the district court for Lee county, sitting at Fort Madison, the defendants appeared, and filed their demurrer to plaintiffs' petition, which demurrer was sustained by the court, and petition dismissed.

From this decree the petitioners appeal to this court, and the parties are agreed that the question presented for the decision of this court, is as to the power of the county of Lee to vote for said railroad subscriptions, so as rendered them valid and binding on the county, and to authorize the issue of bonds in payment thereof, as set forth in petition, by virtue of the propositions submitted by the county judge to the vote of the people of said county.

Several questions have been discussed with great ability and research by the counsel on both sides, on which the decision of this court is desired.

If the objection taken by the complainants to the proceedings of the county judge should be sustained, the result must be that the decree of the district court shall be reversed, and the relief prayed for by them granted.

An examination will first be given to the inquiry, whether the power vested by the statute in the county judge of submitting certain questions to the vote of the people of his county, has been exercised by him in a proper legal and binding manner, in submitting to the vote of the electors of said county, at the special election, the question of subscribing for stock in said railroad companies, in the manner and with the condition thereto annexed, as set forth by complainants.

The authority of the county judge in the premises is derived under chap. 15 of the code, sections 114, 115, 116 et seq. It must be taken as a conceded question, that if the power attempted to be exercised by him has not been conferred by these sections above cited, it has in no other manner been conferred upon him, and his proceedings in the matter complained of have been illegal and void. The county judge is authorized to submit to the people of his county at any general election or at a special election called for that purpose, the question, whether the county will aid to construct any road which may call for an extraordinary expenditure; section 114. In submitting such questions to the vote of the people, the whole question, including the sum desired to be raised, the amount of tax to be levied, the time of its having operation or taking effect, the form in which the question shall be taken, and a copy of the question to be voted upon, are to be duly published and posted up at each place of voting during the day of the election; section 115. When the question to be voted upon involves the borrowing or expenditure of money, it must be accompanied by a proposition to levy a tax for the payment thereof, in addition to the annual taxes; and no vote adopting the question proposed is to be of any validity or effect unless it adopts the tax; also, section 116.

The county judge, on being satisfied that a majority of the votes cast are in favor of the proposition submitted with the requirements of the law, shall "the proposition and the result of the vote therein, to be entered on the minute book of the county court, and notice of its adoption to be given; and from the time of entering the result, the vote and the entry thereof, on the county records, shall have the force and effect of an act of the general assembly:" section 119.

It is claimed that, in the exercise of the authority vested in him by virtue of the above provisions of the code, the county judge of Lee county has not proceeded in conformity to law. The irregu-

larity is charged to consist in his submitting to the vote of the people, at one and the same time, propositions to subscribe to the capital stock of three railroad companies, one hundred and fifty thousand dollars in each of said companies, and in his making the adoption of each of said propositions depend upon the adoption of all.

After the most careful and attentive consideration which we have been permitted to bestow, we have not been able to arrive at the conclusion, that the proceedings of the county judge of Lee county have been authorized by law. We shall proceed to point out the particulars wherein we deem his acts in the premises have been irregular, and consequently void.

The question first arises upon the regularity of the course adopted by him in submitting to the vote, at one and the same time, propositions for the county to subscribe to the capital stock of the railroad companies. The mere fact that there was a submission of these several propositions, at the same time to the vote of the people, if each proposition in other respects met the requirements of the law, would not of itself render invalid the proceedings under such submission; it may be as competent for the county judge to submit these questions to the vote of the people, to be decided at the same election, as to submit one question singly. But in order to render the vote of any validity and to confer any authority by it upon the county judge, all the requisites of the statute must be complied with, in reference to each question or proposition submitted to the vote, involving the borrowing or expenditure of money.

No vote of the people adopting a proposition submitted to them, (as for instance, a subscription to the capital stock of a railroad company, and the issuing of county bonds in the payment of the same,) is of any effect unless there has accompanied the question submitted, a provision for levying a tax to pay the said subscription or money borrowed, and unless the vote of the people adopt the tax also, (see sec. 116;) while the county judge, in the proceedings which are under examination, submitted to the vote of the people the question whether the county should subscribe one hundred and fifty thousand dollars to the capital stock of each of said railroad companies, and while he directed the vote upon the question of each subscription to be taken separately, there was no separate provision for a vote to levy a tax for the payment of each subscription, nor of the bonds which *which* it was sought to authorize the county judge to issue in fulfillment of the same.

We do not think it is requisite under the law that there should be a distinct provision for levying the tax in the proposition submitted to the people, to be voted for separately from the question of subscribing the stock; but we are of opinion, that to render the vote adopting the proposition to subscribe stock in the name of the county of Lee in either of said companies of any effect,

the propositions, and each of them, must be accompanied by a provision for levying a tax to pay the subscription; and it is not sufficient that a provision, general in its character and terms, and applying to the whole three questions submitted, accompanies the proposition, as in this instance, declaring that "an annual tax not exceeding one per centum on the county valuation shall be levied, to be applied to the liquidation of the principal and interest of said bonds." The law, according to the view we have taken of its provisions, evidently contemplates distinctness and unity in each question or proposition submitted for adoption or rejection by a vote of the people. Each proposition submitted to such vote shall be complete in itself, and should contain every requisite prescribed by the statute, as necessary to give validity and effect to the borrowing or expenditure of money, the subscription of stock, or the issue of county bonds.

There is still another objection, which we must regard as equally fatal to the validity of the proceedings on which the authority claimed by the county judge in this instance is based. Every proposition for the borrowing or expenditure of money by a county, and for the laying of a tax to pay the same, receives its vitality as a law from the majority of the votes of the people cast in its favor. Such being the case, we think it is evidently the policy of the law, no less than its spirit and intention, that the vote of the people should be permitted to vote for and against the proposition submitted, with no restraint upon the expression of their choice. We have said that, in our opinion, the law contemplated unity and distinctness in the question authorized to be submitted, in contradistinction to the uniting of several questions in the same propositions, with conditions not required or permitted by the statute. The proceedings coming under our notice in this cause, present a most forcible illustration of the wisdom of what we deem to have been the policy of the statute. The people were not called upon, nor were they permitted to decide by their votes whether the county of Lee should borrow money for one purpose or object.

No single question was submitted to their votes to be decided upon its own merits, or by the judgment of the people in its favor, nor were three propositions submitted at once, to be voted upon and decided either single or in the aggregate.

No question submitted was permitted to stand by itself, or to take effect upon the decision of the people in its favor. On the contrary, while it is contained in the proposition that a majority of votes cast in favor of the subscription to the stock of either company, should be considered its adoption by the people, it is also contained and declared, "that the said subscription shall not be made to either of said companies, unless the vote should be carried in favor of each and all of them."

We cannot regard this in any other light than as an attempt to impose a condition upon the taking effect of the vote of the people

adopting a proposition submitted to them wholly unauthorized by law. They were entitled to have the question of the county taking stock in either of three railroad companies submitted to their decision, unencumbered by any such condition as aforesaid. To make the success of any one proposition depend upon the adoption of all, was to take from the expression of the will of the majority of the people that essential validity intended by the law to be imparted to it, when it declared that the question adopted by them shall have the force and effect of an act of the general assembly.

The county judge can neither add to, nor take from this validity by any proviso, condition, or restriction sought to be improved by him. The will of the people, expressed in the adoption of the proposition for borrowing, or expenditure of money by the county, is the law of the land. The force and effect thus imparted to their will, is intended to be given to that will freely expressed. The county judge can impose no condition upon its taking effect. If the majority of the votes of the people is in favor of the adoption of the proposition, why should it not be declared to be the law, and carried into effect, as provided for and intended in the statute? On the other hand, why should the force and effect of law be given to the vote adopting any proposition which has not solely rested on its own merits for the favor it has obtained at the hands of the people, but which may have been *assited* to the votes it received by other questions with which it was connected, as that it must stand or fall with them. The law, in our opinion, has provided for no such mode of submitting these questions to the vote of the people. The evils which might be permitted to grow up under such a system are so obvious and apparent, that any extended discussion of the question by us would be superfluous. It may be sufficient to suggest, that if it were allowed, measures in themselves odious and oppressive might by means of it become fastened upon a county, which in no other way could have obtained the number of votes requisite to insure their adoption, but by being connected with some other proposition which commended itself to the favor and suffrages of the people by its inherent merits and popularity, they must be adopted or rejected together. After the same manner, a measure desirable in itself and necessary to the people of a county may (when for their adoption) be rejected by their votes, and fail to become a law, by means of its connection with some other measure or measures unpopular or uncalled for. In either case there is an evil. An unpopular measure may be forced upon an unwilling people, or a necessary and desirable one may be denied them, in despite of their wishes. It is sufficient for us to say, that the law, in our opinion, intends to provide for no such system of contradictions. A measure wise and salutary in itself needs no adventitious assistance to recommend it to the suffrages of the people, or to

insure its adoption by them. It may demand that its enactment into a law shall be made to depend upon their sanction alone. A pernicious measure is not entitled to such assistance, and should be permitted to stand or fall by its inherent merits or defects.

It is no sufficient argument herein, in support of the regularity or legality of the proceedings of the county judge, that the record exhibits the fact that each of the propositions submitted to the vote of the people was adopted by a large majority. We do not undertake to say that they might not each have been adopted separately, or in a separate proceeding, unconnected with each other, or with any other questions, but we cannot say, on the other hand, but that in such separate and independent proceedings, one or more might have been rejected by the vote of the people; the possibility is sufficient for us to base an argument upon against the legality of the course adopted. We cannot draw any argument from the result as shown. It is upon this very result that we would base our argument against the validity of the proceedings; they have been adopted by uniting upon each one the votes of the separate friends of all. But why was it deemed advisable to unite them all? Why not suffer each to be adopted or rejected by the people in a separate and independent vote? Why, but because there might be fears that no one project would of itself receive a sufficient number of votes to insure its adoption by the people, and because, by a combination of interests, it might be hoped to unite upon all the propositions the votes of the separate friends of each? A mode of obtaining such a result, we may be permitted to say, which the law did not contemplate, and which to our minds seems wholly unauthorized. Our conviction of the correctness of these views is strengthened by the consideration, that the constitution of the State provides, in reference to acts of the legislature by the general assembly, that every law shall embrace but one object, which shall be expressed in the title; art. 3, sect. 26. The purposes to be secured, as well as the evils to be remedied or avoided by this provision, can hardly be subject of controversy. It was intended to place a check upon a mode of legislation by which measures wholly incongruous, in many instances deleterious and objectionable, were passed into a law uniting them together in one bill, and thus securing the support and influence of the separate friends of each to pass them into a law, a practice so long pursued, that it has in some locations grown into a system, which have become hardly less than historical. The constitutional restriction upon the legislation of the general assembly, does not in its letter apply to the qualified legislation provided for by the statute in the case of borrowing and expenditure of money, or levying taxes to pay the same by the county judge. We can well apprehend, however, how it may become requisite that the spirit of this provision of the fundamental law should run through all the acts and measures of such

inferior and subordinate authorities and tribunals as may have committed them, in even a qualified sense, the duties and responsibilities of legislation. The authority vested in the county judge of submitting certain questions to the vote of the people of his county, which, when adopted by them, are to have the force and effect of an act of the general assembly, is derived entirely from the statute. The duties imposed upon him, and the several steps taken by him throughout the whole of the proceedings, are plainly prescribed by the statute. He may determine whether the question may be submitted to the vote of the people, and the time when it shall be submitted, but beyond this it does not seem to us there is left to him any discretion in the premises. There is no provision for connecting two or more questions in one submission for making the adoption of each one depend upon the adoption of all, nor for imposing any condition whereby a proposition adopted by a majority of the votes, shall be prevented from becoming a law.

The authority exercised by the county judge in the proceedings complained of in this suit, if *the* properly belong to him all, can only be inferred from a construction of the statute, which we do not deem legitimate. We do not think that any such authority can be inferred from it. In the spirit of the prohibitory clause of the constitution to which reference has been before made, we must hold that he is to be confined in the submission of any question by him to the vote of the people to such as shall embrace only one object.

As the decree of the district court denying the relief sought, and dismissing complainants' petition, must be reversed for the reasons above set forth, we do not deem it expedient or necessary at the present time to enter into any examination of the other questions presented and discussed by the counsel; their inherent importance, and the great interest felt in their decision by a large portion of the people of the state, admonish us of the patient study and deliberation with which their investigation must be attended; and we have deemed it proper to avoid rendering any judgment upon them until they shall arise in some cause where their decision is rendered necessary in order to its final disposition.

Another reason which has had its weight with us, is, that it is understood that the questions raised have been passed upon and decided by the former members of this court in the case of the county of Dubuque vs. the Dubuque and Pacific Railroad Company.

But as no written opinion has been filed in this court, and as we are uninformed as to the exact questions decided, as well of the reasons upon which the decision was based, we have concluded to give no opinion upon them; as their decision is not necessary to the final disposition of this cause, we have the more readily adopted this conclusion. The order and decree of the district court in favor of defendant, sustaining the demurrer to complain-

ants' petition, and dismissing the bill, are reversed, and the cause remanded to said district court for further proceedings not inconsistent with this opinion.

SEMPLE, *for Appellant.*
DIXON, *for Dfts.*

Decree reversed.

STOCKTON, *Judge*

Filed Feb. 26, 1858.

E. J. LEECH, *Clerk.*
By D. H. LE SUR, *Dpt.*

ELI MCMILLAN
vs.
SAMUEL BOYLES et al.

And afterwards, to wit, on the 12th day of May, 1858, it being the 1st day of the special term of said court, the said defendants filed the following demurrer to plaintiffs' petition, to wit:

District court, Lee co.—In chancery.

ELI MCMILLAN et al.
against
SAMUEL BOYLES, county judge Lee county, et al.

The defendants not confessing all or any of the matters in the said bill to be true, in manner and form as the same are therein contained and set forth for answer of said bill of said plaintiffs, do demur in law, and for cause of demurrer say, and to this court show, that in case the said allegations in the said bill contained were true, as therein set forth, which they do not admit the said bill contains, nor any matter of equity wherein to sustain such said writ of injunction as is sought and prayed for in and by said bill, nor any matter of equity wherein this court can give to the complainants any relief as against these defendants.

And for further cause of demurrer, these defendants likewise say and to the court show, according to the complainants own showing in said bill, the proceedings of the county judge of Lee county in making subscription to said railroads named in said bill, and in issuing bonds therein mentioned in said bill, and all acts, proceedings, and records had, performed, and made by said county of Lee or any officer thereof concerning said subscription and issuing of said bonds, as well as the levying and collecting of said tax in said bill mentioned, were confirmed, made valid and lawful by the said act of the legislature mentioned in said bill, and all defects, illegalities, irregularities, and errors in the acts, proceedings, and records of said county and the officers concerning, and upon which said subscription was made and said bonds

were issued, were by said law of the legislature mentioned in said bill cured, or that the same could in no way affect or invalidate the said subscription and bonds, or render the correction of the tax in said bill mentioned illegal.

And therefore, and for divers other reasons of demurrer in said bill appearing of the complainants' own showing, def'ts do demur to said bill, and demand the judgment of this court whether they ought to be compelled to make any other or further answer, &c., and pray to be hence dismissed with costs, &c.

J. M. BECK,
Sol. for Dfts.

Filed May 12th, 1858.

E. J. LEECH, *D. C.*
By D. H. LE SUER, *Dpty.*

The following papers were also filed, on the 12th day of May, 1858, to wit:

In dist. court, Lee county.—In chancery.

ELI MCMILLAN et al.
vs.
SAMUEL BOYLES, Co. judge, ROBERT MCFARLAND, Co. treas.

In the foregoing cause, it is agreed that it be submitted for trial upon the demurrer of defendants to the bill of plaintiffs, and that the said demurrer be sustained by the court and a decree accordingly be entered pro forma dismissing the bill from said decree. Ptffs. may appeal to the supreme court, where the said cause upon said demurrer shall be heard de novo, without prejudice on account of this agreement or anything herein contained.

April 8th, 1858.

FRANCIS SEMPLE,
For Plaintiff.
J. M. BECK,
For Defts.

Filed May 12th, 1858.

E. J. LEECH, *Clk. D. C.*
By D. H. LE SURE, *Dpty.*

And afterwards, on the said day, the following record was made, to wit:

Wednesday, May 12, A. D. 1858.—In chancery.

ELI MCMILLAN et al.
vs.
SAMUEL BOYLES, county judge, and ROBERT MCFARLAND, county treasurer.

This cause coming on to be heard by the court on the demurrer of the defendants to plaintiffs' petition, and the court having

considered the same, it is ordered, adjudged, and decreed that *that* the demurrer be sustained, and complainants' bill of complaint be dismissed with costs, taxed at the sum of $7.45.

State of Iowa, county of Lee, ss.

I, Erie J. Leech, clerk of the district court in and for said county, hereby certify the foregoing pages, numbered from one to nineteen inclusive, to contain a true copy of the papers from the original, directed to be made by the parties herein, to be transmitted to the supreme court, and also a true copy of the record.

In witness whereof, I have hereto set my hand and affixed the [L. S.] seal of said court, at Fort Madison, this 25th day of May, A. D. 1858.

ERIE J. LEECH, *Clerk D. C.*
By D. H. LE SURE, *Dept.*

And afterwards, to wit, on the 22d day of June, 1858, the following order was made, to wit:

ELI MCMILLAN et al.
vs.
SAMUEL BOYLES, Co. judge of Lee county, and ROBERT MCFARLAND, Co. treasurer. } Appeal from Lee co.

This cause having been submitted to the consideration of the court, and the court being now sufficiently advised in the premises, find that there is no error in the rendition of the judgment of the district court, and file their written opinion.

It is therefore considered by the court, that the judgment of the district court be affirmed, and that a writ of procedendo issue accordingly and that the appellee have and recover of and from the appellant his costs in this behalf, &c.

The State of Iowa, ss.

The State of Iowa, to the district court for the county of Lee.

Whereas, the supreme court of said State, being lately certified of the record and proceedings in a certain cause, which was in the district court for the county of Lee, and State aforesaid, wherein Eli McMillan et al., plaintiffs, and County Judge and Treasurer of Lee Co., defendants, in which said cause judgment was rendered against the said plaintiffs; from which judgment so rendered, the said plaintiffs appealed to the said supreme court, and the said court having duly examined the record and proceedings aforesaid in the premises, at the capitol in Des Moines, in said State, on the 22d day of June, 1858, did affirm the judgment aforesaid as rendered in the court below.

Therefore, you are hereby commanded that with the speed which of right, and according to law you may, you proceed in the same manner as if no appeal had been taken and prosecuted in

this court, any thing in the record or proceedings aforesaid heretofore certified to the contrary notwithstanding.

Witness, L. Kinsey, clerk of the supreme court, with the seal of said court hereunto affixed, at Des Moines, this day of A. D. 1858.

L. KINSEY,
Clerk of the Supreme Court.

June term, 1858.

ELI MCMILLAN et al., appellant,
v.
CO. JUDGE and TREASURER OF LEE COUNTY.
} Appeal from the Lee district court.—In chancery.

The county of Lee, at an election held in 1856, by a majority of the votes cast, determined to issue bonds and take stock in three several railroad companies, then constructing their roads through said county. At the Dec'r term, 1856, of this court, said election was held irregular, and it was determined that, as conducted, it conferred no power upon the county judge to issue the proposed bonds. On the 29th of July, 1857, the legislature passed "An act legalizing the issue of county, city, and town corporation bonds in the counties of Lee and Davis." The county judge proceeded to take the stock, and issue the bonds referred to in said vote and law. A tax was *was* levied to meet the interest, as in said vote contemplated, and the petitioners, voters, and tax-payers in said county filed their bill, praying an injunction to restrain the collection of the same. Respondents demurred to the bill; this demurrer was sustained, the injunction dissolved, and complainants appeal.

F. SEMPLE, *for Appellants.*
J. M. BECK & J. C. HALL,
For Appellees.

WRIGHT, *C. J.*

The power of a county to take stock in a company organized for the purpose of constructing a railroad or other public improvement through the same, has been recognized by a majority of this court in the following cases: Dubuque county v. Dubuque and Pa. R. R., 4 G. Greene, 1; Leech v. Bissell, county judge of Cedar Co.; Clapp v. Cedar Co., 4 Iowa; Ring v. Johnson Co., (decided the present term.)

While I have never concurred in this ruling, and still deny the power, yet it may now, as I suppose, be regarded as settled. Assuming this much, I think but one question remains to be considered in this case, and that is, whether the legislature had the power to pass the act of Jan'y 29th, 1857, and did it have the effect of legalizing the vote taken.

The language of the law is, that all votes heretofore taken in the counties of Lee and Davis, in the form of a joint or *several* proposition, whether said counties will aid in the construction of one or more railroads, specifying the amount to be given to each as a joint or *several* proposition, and the subscriptions made by said counties, and the bonds of said counties, issued in pursuance of said votes and subscriptions, or hereafter to be issued, are hereby declared to be legal and valid, and that all such bonds issued and hereafter to be issued in pursuance of such votes and subscriptions, shall be a valid lien upon the taxable property of said county." It is also provided that the county judge or other proper authority shall levy and collect a tax to meet the payment of the principal and interest of such bonds, and that said counties shall not be allowed to plead in any suit brought to recover the principal or interest of such bonds; that the same are irregular invalid in consequence of the informalities *cured* by this act; and finally, all bonds issued by said counties for subscriptions to railroads, in pursuance of any vote of the people, are declared to be valid, and of full, legal, and binding force and effect, notwithstanding any informality or irregularity in the submission of the question to the vote of the people.

By reference to the case of McMillan et al. v. Lee county, 3 June, 311, it will be seen that three propositions were submitted at the same time to the voters of Lee county, but that the subscription was not to be made to either of the companies, unless there was a majority of the votes cast in favor of each and all of them. This was held to be irregular, and it is this irregularity which was designed to be cured by the legislature. And it seems to me very clear, that if the legislature can authorize the counties to make such subscriptions by a vote of the people, it can certainly legalize and cure any informality or defect in taking the vote.

Having the power, the legislature could have authorized in advance the county judge to submit the questions, as he did. He submitted it, however, in a manner not provided for in the law, and subsequently this submission is legalized and declared valid. I cannot see how it can change the matter whether the power is given beforehand, or the informality cured subsequently. The right of the legislature to pass such laws, retrospective in their character, cannot, as I think, be seriously questioned. The policy of such legislation is another thing, with which I have nothing to do. The case of the City of Bridgeport v. Housatonic Railroad Co., 15 Conn., 475, is in point. See also 3 Dallas, 385; 8 Pet., 110; 2 ib., 412, 661.

It is urged, however, that the act of Jan'y 29, 1857, is unconstitutional. It is claimed to be so, because it legalizes the votes and the bonds issued in Davis and Lee counties; does not embrace all the counties, and cannot therefore have a uniform op-

peration through the State. The language of the constitution (sec. 6, art. 1) is, that "all laws of a general nature shall have a uniform opperation." It will not be claimed certainly that this law is of a general nature; and thus we see that this objection is without foundation.

It is also urged that the curative act is not a law but a legislative sentence, and that the constitution confers no power to thus legislate. The true inquiry, however, is whether the exercise of the power is inhibited.

In ascertaining the power of the legislature under the constitution, we look not to what the instrument authorizes to be done, but to what is prohibited. In this case, there is no provision prohibiting, either expressly or by implication, such legislation.

The other objections relate to the power of the legislature to authorize a county to make such subscriptions. For reasons before stated, I need not refer to these. While I concur in denying this power, I am of the opinion that it was perfectly competent for the legislature to legalize and make valid any informality or defect in the vote taken.

WRIGHT, *C. J.*

State of Iowa, supreme court.

I, Lewis Kinsey, clerk of the supreme court of Iowa, do hereby certify that the foregoing pages contain a full, true, and complete copy of the transcripts, record, entries, and opinions of the court in the cause to which it relates, as full, true, and complete as the same now remains of record and on in file in my office.

[SEAL.] Witness my name and the seal of said court hereto affixed, at Des Moines, this 8th day of March, 1859.

LEWIS KINSEY, *Clerk.*

In supreme court of Iowa, June term, 1858.

ELI MCMILLAN et al.
vs.
SAMUEL BOYLES, county judge, and ROBERT MCFARLAND, treasurer and collector of Lee county, Iowa.
} Writ of error to Supreme Court United States.

And now comes pl'ffs in error, who were pl'ffs below, by counsel, and assigns as error the following:

1st. The supreme court of the State of Iowa erred in sustaining the statute of that State, recited in pl'ffs complaint. Said statute is found in pamphlet laws of the State for 1857, page 447.

2d. Said statute should have been declared void, because it impairs the obligation of the fundamental contract existing between plaintiffs as citizens and subjects of the State of Iowa, and said State, as expressed in her constitution.

3d. Said statute should have been held void, because it inter-

feres with the enjoyment of the soil in the hands of bona fide purchasers from the government of the United States, and with regulations made by said government through Congress for securing the title to such purchasers.

4th. It should have been held void, because it is a despotic sentence and not a law, and is anti-republican in the sense of the constitution of the United States.

For above and other manifest errors. pl'ffs pray that the decree of the supreme court of the State of Iowa be reversed, and the said statute of the State of Iowa declared null and void, to all intents and purposes whatever.

FRANCIS SEMPLE,
Attorney for Pl'ffs, resident in Iowa.